IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 234 of 1999

Dr.S.H.Sithik Basha ..Appellant/Complainant.

-vs-

Fazal Ahmed .. Respondent/3rd Accused.

This appeal is filed against the Judgment passed in C.C.No.177/1997 dated 10.12.1998 on the file of Judicial Magistrate No.II, Chengleput.

For appellant: : Mr. S.Rajasekaran
For respondent: : Mr.S.Shanmugavelayutham
Senior Counsel
for Mr.B.K.Appakutty.

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.177 of 1997 on the file of Judicial Magistrate No.II, Chengleput. The complainant is the appellant herein.

2. The short facts in the complaint preferred by the complainant relevant for the purpose of deciding this appeal sans irrelevant particulars are as follows:
The complaint was preferred against the accused under Sections 499 and 500 IPC. The occurrence has happened between 4.9.1995 and 18.1.1996. The appellant, deceased Dr.S.H.Sheik Dawood, third accused Fazal Ahmed and Kalilur Rahman are the sons of deceased Sheik Hussain. The second accused Ayisha Begum ,is the daughter of Sheik Hussain, fourth accused is the son of second accused. The appellant's father deceased Sheik Hussain, belongs to Salem District. He had married Hathoon Bi as per the provisions of Mohammedan Law. In the wed lock, they have been blessed with Sheik Dawood and second and third accused . After the death of Hathoon Bi, Sheik Hussain has married the mother of the appellant viz., Hazaram Bi in the year 1948 at Karur. The appellant was born in the wed lock on 22.12.1950. The birth of the appellant has been registered in the Karur Municipality. Subsequently, the other brother of the appellant viz., Kalilur Rahman was born at Sankagiri. Even before the marriage of Sheik Hussain and Hazaram Bi, the second accused Ayisha Begam got married and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

she was living with her husband at Salem. The father of the appellant was working in a Mosque. Hence, their family were residing at Authoor and Sankagiri and in those places, Sheik Hussain and Hazaram Bi were living with the appellant's brother Kalilur Rahman, Second accused, third accused and the deceased Sheik Dawood under one roof. The deceased Sheik Dawood got a job at Vellore and thereafter, he married the first accused and stayed at Vellore itself. During 1990, he came to Chengleput and stayed there. From 1964 onwards, the appellant along with his brother Kalilur Rahman came to Alambakkam and began to reside with Sheik Dawood. In 1966, appellant's mother died. In 1967, the appellant began to live with Sheik Dawood at Door No.1/6, Thirukazhukundram Main Road, Alambakkam and the appellant was indulged in practising Unani Medicine. The appellant's brother also educated, Sheik Dawood and secured a job for him. Afterwards, the above said three brothers used to reside in the above said same address. On 1.11.1971, the House warming ceremony was performed and on 21.9.1978, the marriage of the appellant was also conducted. In the invitation for the above said functions, the relationship of Sheik Dawood and the appellant and his brother were printed. The marriage of Kalilur Rahman was performed by Sheik Dawood on 25.5.1980 in the capacity of brother of Kalilur Rahman. On 3.5.1995, Sheik Dawood died at Thirukazhukundram. Afterwards, third accused and fourth accused began to quarrel with an idea of grabbing at the properties. Hence the appellant and his brother Kalilur Rahman filed a suit O.S.No.371 of 1995 before the District Munsif, Chengleput and in the said suit, I.A.No.1373 of 1995 was also filed. In the said I.A., the fourth accused had filed a counter on 4.9.1995 stating that the petitioners are not the brother of Sheik Dawood and that the father of the petitioners are different from the father of Sheik Dawood and third respondent and that the petitioners' mother Hazaram Bi was earlier married to a postman at Karur and she later deserted him and began to live with Sheik Hussain, the father of the respondents and Sheik Dawood and that at that time, the petitioners were aged 4 and 2 respectively. The appellant along with his brother issued a notice through their lawyer on 21.9.1995 to the accused stating that the allegation in the counter about their mother Hazaram Bi are defamatory in nature. The accused sent a reply on 9.10.1995 containing false statements. The second and third defendants in the suit have also filed a written statement in the above lines as in the counter filed by the fourth accused in I.A.No.1373 of 1995 in O.S.No.371 of 1995. But the defamatory statements in the written statement in O.S.NO.371 of 1995 and in the counter in I.A.No.1373 of 1995 are not true and Hazaram Bi is the legally wedded wife of Sheik Hussain. The appellant as well as his brother Kalilur Rahman are the children of the said Hazaram Bi and Sheik Hussain. Only to defame the mother Hazaram Bi and his brother Kalilur Rahman, the accused have stated in their counter as well as in the written statement, the said defamatory allegations. The said defamatory allegations were purposely stated by the third accused and because of the defamatory allegations, the reputation of the appellant as well as his brother were very much affected. The said allegations are defamatory in nature causing mental agony to the appellant as well as his brother . Hence the private

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

complaint was filed by the appellant under Section 200 Cr.P.C. before the Additional District Judge-cum-Chief Judicial Magistrate, Chengleput. The said application was taken on file as C.C.No.7 of 1996 and on appearance of second accused and fourth accused, they filed a compromise petition along with the appellant and hence second accused and fourth accused were acquitted under Section 257 Cr.P.C. The first accused died before the service of summon. Hence the charge against the first accused was treated as abated. As against third accused, the case was split up as C.C.No.53 of 1996 and copies under Section 207 Cr.P.C. were furnished to him and when questioned the accused pleaded not guilty. The case was transferred to Judicial Magistrate, No.II, Chengleput by the Chief Judicial Magistrate , Chengleput and re-numbered as C.C.No.177 of 1997.

3. On the side of the complainant four witnesses have been examined and nineteen documents were marked. After going through the available evidence both oral and documentary, the learned Judicial Magistrate has come to a conclusion that the accused is not guilty under Sections 499 and 500 IPC and consequently acquitted the accused under Section 255(1) Cr.P.C. Aggrieved by the findings of the learned Judicial Magistrate No.II, Chengleput, the complainant has preferred this appeal.

4. Now the point for consideration in this appeal is whether the Judgment of the Judicial Magistrate No.II, Chengleput in C.C.NO.177 of 1997 is liable to be set aside for the reasons stated in the memorandum of appeal?

5. Heard Mr. S.Rajasekaran, learned counsel appearing for the appellant and Mr.S.Shanmugavelayutham, Senior Counsel appearing for the respondent and considered their rival submissions.

6. The Point:
The learned Senior Counsel for the respondent would contend that the charge against the accused/respondent will squarely come within Exception 9 to Section 499 IPC, since the allegation in the counter filed in I.A.NO.1373 of 1995 and in the written statement filed in O.S.No.371 of 1995 are made in good faith for the protection of the interest of the person making it in the civil suit in O.S.No.371 of 1995 filed by the appellant. Exception 9 to Section 499 IPC runs as follows:

> " Imputation made in good faith by person for protection of his or others interests. It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it , or for any other person, or for the public good."

The learned Senior counsel appearing for the respondent/third accused would contend that the appellant along with his brother had filed a civil

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

suit in O.S.No.371 of 1995 in the District Munsif's Court, Chengleput for partition against the accused and to defend the case, the defendants, who are the accused herein, have filed a written statement and counter stating that the mother of the appellant viz., Hazaram Bi already married to a post man by name Dasthagir at Karur and after deserting him, she came along with the appellant and his brother and began to live with Sheik Hussain, the father of the accused and that the above said statement in the written statement and counter will not amount to an offence of defamation, since the imputation of the statement was made in good faith for the protection of the interest of the defendants/accused in the civil cases. In support of his contention, the learned Senior Counsel for the respondent relied on a decision reported in Girish Kakkar and another-vs-Dr.(Mrs) Dhanwantri and others (1991 Crl.L.J.5) wherein it has been held by the learned Judge as follows:

> "Turning to the facts of the present case, in so far as the petitioner is concerned, the allegations in the complaint are that the petitioner made written submissions in Kuldip Singh's (1982 Cri.L.J.629(2)(SC) Court denying the relationship of the complainant with the accused No.1 thus defaming her. Para 14 of the complaint which alone contains allegations against the petitioner has been extracted above. What relationship has been denied is not stated in the complaint. What precise written submissions were made is also not stated. In what manner the complainant was defamed is also not stated. Assuming the denial by petitioner was of the alleged relationship of the husband and wife between complainant and accused No.1, it is to be remembered that besides other relations accused No.1 himself was denying the said relationship. The petitioner was only a landlord. He had obtained an order of eviction. In reply to application of the complainant for restoration of possession or for setting aside the eviction order, the aforesaid relationship pleaded by the complainant is merely denied by the landlord without anything more. On these facts and circumstances can such vague and general denial which is attributed to the petitioner constitute defamation, admitting for the present purposes, the allegations in the complaint to be correct. The answer, in my view, has to be in the negative. From the facts and circumstances set out above, it seems clear, that the imputation attributed to the petitioner in the complaint are not capable of being understood in a defamatory sense. The context in which the alleged denial is made, no defamatory intention, knowledge or belief can be attributed to the petitioner. In the complaint no such intention, knowledge or belief has been alleged against the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> petitioner and only a general allegation that petitioner defamed the complainant has been attributed to him. Such vague and general imputation, without anything more, cannot, in my view, constitute defamation."

In this case also, the allegations made in the written statement and counter in the earlier civil cases between the parties, were pleaded in good faith only to defend the case of the defendants/accused in the civil case. So this will squarely come within the Exception 9 to Section 499 IPC.

7. The learned trial Judge has also correctly held that only with good faith the accused as defendants in the civil suit have alleged in the written statement and counter that the mother of the appellant and his brother had lived earlier with one Dasthagir, a postman at Karur and that both the appellant and his brother were born to Dasthagir and Hazaram Bi and that after deserting Dasthagir, she came and lived with Sheik Hussain.

8. Under such circumstances, I do not find any illegality or infirmity in the findings of the learned Judicial Magistrate No.II, Chengleput in C.C.No.177 of 1997. The point is answered accordingly.

9. In the result, the appeal is dismissed confirming the Judgment in C.C.No.177 of 1997 on the file of Judicial Magistrate,NoII, Chengleput.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To
1. The Judicial Magistrate No.II,Chengleput.
2. -do- through the Chief Judicial Magistrate, Chengleput.
+ 1 CC To Mr. T.Sudanthiram, Advocate SR NO. 910
+ 1 CC To Mr. B.K.Appukutti, Advocate SR NO. 751

CRIMINAL APPEAL No. 234 of 1999

tej[co]
Gp/12.1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/